Supreme Court, U.S.
FILED
APR 22 1993
OFFICE OF THE CLERK

No. 92-1547

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

INTERSTATE COMMERCE COMMISSION,
Petitioner,

v.

TRANSCON LINES, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF AMICUS CURIAE OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS IN SUPPORT OF RESPONDENTS

Of Counsel:
RICHARD N. GILBERG
EARL V. BROWN, JR.
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, N.W.
Washington, D.C. 20001

MARC J. FINK *
TORBJÖRN B. SJÖGREN
SHER & BLACKWELL
1255 Twenty-Third St., N.W.
Suite 500
Washington, D.C. 20037
(202) 857-2990
Counsel for Amicus Curiae

April 22, 1993

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

® 60

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF AMICUS CURIAE	1
SUMMARY OF REASONS WHY WRIT SHOULD BE DENIED	3
REASONS WHY WRIT SHOULD BE DENIED	4
I. THE NINTH CIRCUIT DECISION DISMISSING THE INJUNCTION IS IN ACCORDANCE WITH *REITER v. COOPER*	4
II. THE NINTH CIRCUIT'S DECISION IS CONSISTENT WITH *COMMERCIAL METALS*	6
III. THE NINTH CIRCUIT'S DECISION UPHOLDS THE FILED RATE DOCTRINE	8
CONCLUSION	10

TABLE OF AUTHORITIES

CASES Page

Consolidated Rail Corp. v. Container Systems Corp., 553 F. Supp. 418 (S.D.N.Y. 1981) 7, 9

Maislin Industries, U.S. v. Primary Steel, Inc., 497 U.S. 116, 110 S.Ct. 2759, 111 L.Ed.2d 94 (1990) 6, 7, 8, 9

Reiter v. Cooper, 61 U.S.L.W. 4232 (March 8, 1993) 3, 4, 5, 6, 8

Southern Pacific Transp. Co. v. Commercial Metals, 456 U.S. 336, 102 S.Ct. 1815, 72 L.Ed.2d 114 (1982) 4, 6, 7, 8, 9

STATUTES

49 U.S.C. § 10701(a) 5

49 U.S.C. § 10741(b) 9

49 U.S.C. § 10761(a) 2, 6

49 U.S.C. § 10762(a)(1) 2, 6

49 U.S.C. § 11705(b)(3) 5

REGULATIONS

49 C.F.R. § 1320.2(g)(2)(iii) 2

49 C.F.R. § 1320.2(g)(2)(vi) 2

49 C.F.R. § 1320.3(c) 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

No. 92-1547

INTERSTATE COMMERCE COMMISSION,
Petitioner,

v.

TRANSCON LINES, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF AMICUS CURIAE OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS IN SUPPORT OF RESPONDENTS

Amicus Curiae, the International Brotherhood of Teamsters ("IBT"), hereby requests that the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit sought by Petitioner, Interstate Commerce Commission ("ICC" or "Commission"), be denied.

INTEREST OF AMICUS CURIAE

This case involves an effort by Transcon Lines' ("Transcon") trustee in bankruptcy to recover undercharges that resulted from shippers failing to pay filed tariff rates. Transcon's duly published tariff provided for a discount if

shippers paid freight charges within 90 days of shipment. Failure to pay within the 90 days resulted in the application of the otherwise published non-discount rates. After Transcon went into bankruptcy, an audit of its records showed that many shippers had paid discount rates long after the 90-day period had elapsed. Since this was in clear violation of Transcon's tariff, the trustee sought to recover the applicable undercharges from the shippers, *i.e.*, the difference between the discount and non-discount rates. The ICC has sought to enjoin the trustee from collecting these undercharges on the basis that Transcon failed to comply with the Commission's credit regulations.[1]

Both the district court and the court of appeals rejected the ICC's arguments that failure to adhere to certain credit regulations prohibited the trustee from collecting Transcon's filed tariff rates.[2] The ICC has, however, filed a number of petitions for reconsideration in conjunction with requests for a stay of the trustee's collection efforts. Although the court of appeals has refused to reverse its dismissal of the injunction, these petitions have managed to delay collection of the undercharges. The ICC now has sought to further delay matters by filing this petition for a writ of certiorari (hereafter "Petition") with this Court.

Former and current members of the IBT who had been employed by Transcon are the largest creditors of the Transcon estate. A proof of claim has been filed in the

---

[1] The ICC has alleged that Transcon's original bills did not advise shippers of the consequences of late payment, in violation of 49 C.F.R. 1320.3(c); revised bills were not issued until after the 90-day period provided for in 49 C.F.R. 1320.2(g)(2)(vi); and the trustee sought to apply the loss-of-discount provision on an aggregate basis, contrary to 49 C.F.R. 1320.2(g)(2)(iii).

[2] The duty of a carrier to collect and a shipper to pay filed tariff rates, sometimes referred to as the "filed rate doctrine", is a clear requirement of the Interstate Commerce Act. 49 U.S.C. §§ 10761(a) and 10762(a)(1).

bankruptcy proceeding on their behalf for back wages, severance pay, etc., for more than $23 million. (A copy of that proof of claim is attached hereto as Appendix A.) In addition, a claim for almost $16 million was filed by the Central States, Southeast and Southwest Areas Pension Fund, which is the pension fund covering IBT members employed by Transcon. (A copy of that proof of claim is attached as Appendix B hereto.) The undercharge claims brought by Transcon's trustee are the estate's major, if not only, asset and the collection of these claims represents the only hope which these former employees have of recovering any portion of the monies they are owed. For that reason and because adoption of the ICC's position would significantly erode the filed rate doctrine which is of critical importance to the well being of hundreds of other motor carriers and the thousands of people they employ, many of whom are IBT members, this brief is being filed in support of the Respondents and in opposition to the Petition.

SUMMARY OF REASONS WHY WRIT SHOULD BE DENIED

The decision of the Ninth Circuit correctly held that a failure to adhere to certain procedural rules concerning the application of credit did not obviate the statutory requirement that Transcon collect and its shippers pay filed tariff rates. Pet. at 19a.[3] In recently reaffirming the filed rate doctrine in *Reiter v. Cooper*, 61 U.S.L.W. 4232 (March 8, 1993), this Court held that shippers may assert defenses or counterclaims accorded them by the Interstate Commerce Act to avoid payment of the tariff rate. *Reiter v. Cooper* did not, however, authorize the ICC to prohibit or interfere in any way with a trustee's efforts to collect filed tariff rates. There is absolutely no merit to the ICC's contentions that the Ninth Circuit

[3] Citations to the ICC's Petition and Appendices are referred to as "Pet. at ——."

decision should be remanded for reconsideration in light of *Reiter v. Cooper.*

In *Southern Pacific Transp. Co. v. Commercial Metals,* 456 U.S. 336 (1982), this court rejected the very same position now being advanced by the Commission. Thus, *Commercial Metals* held that a violation of credit regulations by a common carrier did not provide a basis for avoiding the carrier's filed tariff rates. The Commission's general authority to enforce its credit regulations does not include the authority to set aside the filed rate doctrine.

The ICC's credit regulations, consistent with the Interstate Commerce Act, are intended to prevent discrimination among shippers. *Southern Pacific Transp. Co. v. Commercial Metals,* 456 U.S. at 346. By permitting a shipper to obtain a rate it was not entitled to receive under the carrier's tariff because of failure to pay within a prescribed period, that shipper would be unduly preferred to the detriment of other shippers. In dismissing the ICC's efforts to enjoin the trustee from enforcing the loss of discount provision in Transcon's tariffs, the Ninth Circuit was preventing discrimination among shippers.

REASONS WHY WRIT SHOULD BE DENIED

I. THE NINTH CIRCUIT DECISION DISMISSING THE INJUNCTION IS IN ACCORDANCE WITH *REITER v. COOPER*

The ICC requests in its Petition that this Court "vacate the judgment and remand the case to the court of appeals for further consideration in light of *Reiter v. Cooper* [61 U.S.L.W. (March 8, 1993)]." Pet. at 18. The ICC's contention that the court of appeals' decision is inconsistent with *Reiter v. Cooper* is unfounded. Indeed the Ninth Circuit's decision is mandated by and entirely consistent with *Reiter.*

The ICC interprets *Reiter* as granting the ICC the authority to "bring a civil action to enforce the [Interstate

Commerce] Act" including the "prohibition of credit transactions except as authorized by ICC regulations." Pet. at 15. In *Reiter*, this Court reaffirmed the validity and need for strict enforcement of the filed rate doctrine. *Reiter v. Cooper*, 61 U.S.L.W. at 4233 and 4234. While the *Reiter* Court went on to hold that *shippers* may avoid the filed rate by asserting claims and defenses accorded by the Act, nowhere in *Reiter* does the Court grant the ICC authority to seek to enjoin collection of the filed tariff rates by a bankruptcy trustee.

> The filed rate doctrine embodies the principle that a *shipper* cannot avoid payment of the tariff by invoking common-law claims and defenses such as ignorance, estoppel, or prior agreement to a different rate. * * * It assuredly does *not* preclude avoidance of the tariff rate, however, through *claims* and *defenses* that are specifically accorded by the ICA itself. We can agree with respondents that this latter category does not include any 'unreasonable-rate defense,' derived from the general ICA requirement (now codified in § 10701(a)) that a carrier's rates be 'reasonable.' * * * But we cannot agree that the filed rate doctrine precludes *shippers* from asserting (by way of *claim* or *counterclaim*) the reparations rights explicitly conferred by § 11705(b)(3).

Reiter v. Cooper, 61 U.S.L.W. at 4234 (emphasis added; citations omitted). While the ICC acknowledges that the *Reiter* Court granted only shippers the right to raise defenses and counterclaims, it then contends without any support that "this principle applies with even greater force to injunctive actions brought by the ICC to effect compliance with the requirements of the Act." Pet. at 9. The ICC's contention is noticeable for its lack of authority.

Even assuming *arguendo* that the ICC could step into a shipper's shoes to assert a claim or defense to an undercharge action, failure to adhere to ICC credit regulations is not a claim or defense cognizable under the Interstate

Commerce Act to such an action by a trustee. The filed rate doctrine, *i.e.*, the duty of the carrier to collect and the shipper to pay filed tariff rates (see 49 U.S.C. §§ 10761(a) and 10762(a)(1), and *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116 (1990)) cannot be thwarted because of a carrier's failure to comply with credit regulations. This was the holding of the Court in *Southern Pacific Transp. Co. v. Commercial Metals Co.*, 456 U.S. 336 (1982). In *Commercial Metals*, the Court specifically concluded that,

> . . . the carrier's . . . violation of the credit regulations are insufficient . . . to overcome the time-honored rule that under such circumstances, no act or omission of the carrier (except the running of the statute of limitations) will estop or preclude it [the carrier] from enforcing payment of the full amount by a person liable therefor.

Id. at 352 (citations omitted). Since a shipper cannot avoid the enforcement of the filed rate by asserting violations of the ICC's credit regulations, there is no basis under *Reiter v. Cooper* for finding that the ICC may do so. Even if *Reiter* were construed as enabling the ICC to assert the same claims and defenses as a shipper to an undercharge action, it clearly does not give the ICC additional defenses which are not available to shippers.

Accordingly, the ICC's argument that *Reiter v. Cooper* is in conflict with the court of appeals' decision is unfounded and misleading. To the contrary, the holding of the court of appeals enforcing Transcon's filed rates is fully consistent with and indeed mandated by the Court's decision in *Reiter*.

II. THE NINTH CIRCUIT'S DECISION IS CONSISTENT WITH *COMMERCIAL METALS*

In the alternative, the ICC suggests in a footnote that the court of appeals' decision should be summarily reversed in view of this Court's recognition in *Southern Pacific Transp. Co. v. Commercial Metals, supra*, that

the ICC may enforce its credit regulations through an injunction. Pet. at 18.

The court of appeals, in accordance with *Commercial Metals*, recognized that the ICC has the general authority to enforce its credit regulations by seeking an injunction and that the ICC has broad powers to shape remedies for the violation of its rules. Pet. at 18a. Thus, for example, the ICC could prohibit carriers from extending credit when they have previously done so in violation of ICC regulations or it could reject tariff credit provisions which fail to comply with regulations. However, as noted above, both this Court in *Commercial Metals* and the court of appeals below, concluded that a violation of the credit regulations does not preclude collection of the filed rate:

> [N]either the statute under which the regulations were promulgated, 49 U.S.C. § 3(2), nor the regulations themselves intimate that a carrier's violation of the credit rules automatically precludes it [the carrier] from collecting the lawful freight charge.

Southern Pacific Transp. Co. v. Commercial Metals, Co., 456 U.S. at 344-345.

> The case, however, is different when the ICC seeks an injunction applying its regulations in such a way as to undercut the filed [rate] requirement. Then *Maislin* governs. Regulations, however valid in other contexts, cannot furnish the reasons for letting the carrier abandon the filed rate.

Pet. at 19a.[4] Accordingly, notwithstanding the ICC's contention to the contrary, the court of appeals' decision was entirely consistent with *Commercial Metals*.

---

[4] See also *Consolidated Rail Corp. v. Containair Systems Corp.*, 553 F. Supp. 418, 421 (S.D.N.Y. 1981) holding that credit regulations ". . . implement the Congressional purpose of preventing rate discrimination in the form of differential credit arrangements" and "provide no basis for imposing the extraordinary relief of excusing compliance with applicable tariffs." It is also noteworthy that the credit regulations relied upon by the ICC do not provide an affirmative defense to undercharge claims. See *Southern Pacific Transp. Co. v. Commercial Metals Co.*, 456 U.S. at 345.

III. THE NINTH CIRCUIT'S DECISION UPHOLDS THE FILED RATE DOCTRINE

The ICC also argues (Pet. at 17) that the court of appeals' decision distorts the filed rate doctrine and creates confusion for the ICC and the millions of regulated shippers:

> . . . [the court of appeals' decision] harms entities that ICC regulation is designed to protect and erodes public confidence in the stability of the regulated industry. The court of appeals ruling creates a particularly serious threat, because it calls into question whether shippers can rely on any aspect of ICC regulations regarding interstate transportation.

Pet. at 16. This is plainly untrue. As the Court has repeatedly held in *Commercial Metals* and *Maislin*, the filed rate doctrine is "utterly central" to the administration of the Interstate Commerce Act and without it, it would be "monumentally difficult to enforce" the statute's nondiscriminatory and reasonableness requirements. *Maislin Industries, U.S. v. Primary Steel, Inc.*, 110 S.Ct. at 2769, and *Southern Pacific Transp. Co. v. Commercial Metals Co.*, 456 U.S. at 343-344. Here, the ICC is seeking to enjoin collection of filed tariff rates and thus rather than promoting public confidence, the ICC's actions if allowed to prevail would undermine the administrative foundations of the Act.

Refusing to enforce Transcon's loss of discount provisions—the filed rate—would not only be contrary to the Interstate Commerce Act and this Court's recent decisions in *Maislin* and *Reiter v. Cooper*, but it would also run afoul of the well-established principle that strict enforcement of tariff terms is required to prevent discrimination between shippers.

> This rule of strict adherence to statutory standards is in line with the historic purpose of the Interstate Commerce Act—to achieve uniformity in freight

> transportation charges, and thereby to eliminate . . . discrimination and favoritism . . . .

Southern Pacific Transp. Co. v. Commercial Metals Co., 456 U.S. at 344. See also, *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 110 S.Ct. at 2766. Here, if the Commission's arguments prevail and Transcon's loss of discount provisions are voided, discrimination would occur because all shippers utilizing Transcon's services would receive the discounted rates, regardless of when the freight charges were paid. Shippers who paid in more than 90 days would, in effect, be given preferential treatment by being granted the same terms as shippers who paid in less than 90 days. This is exactly what the ICC's credit regulations were intended to prevent. *Consolidated Rail Corp. v. Container Systems Corp.*, 453 F. Supp. at 421; see also, 49 U.S.C. § 10741(b) ("A common carrier . . . may not subject a person . . . to unreasonable discrimination")

Although the ICC has attempted to paint the trustee as the "villain" and the shippers as "helpless victims", the reality of this case is far different as the court of appeals recognized:

> The equities here are not necessarily with the late-paying shippers. They enjoyed an extension of credit by the carrier while the carrier became insolvent. It is not unfair to make them now contribute to the payment of the carrier's unsecured creditors.

Pet. at 20a-21a. These shippers intentionally and willfully declined to pay discounted freight charges within the published 90-day period. They took undue and improper advantage of Transcon's extension of credit. As a result, Transcon's cash flow was severely jeopardized and it was forced into bankruptcy. Numerous people lost their jobs and are owed substantial sums of money. As a matter of law and as a matter of equity, these shippers ought not be relieved of their obligation to pay the non-

discounted rates published in Transcon's tariffs which are applicable to shippers who fail to pay freight charges in the time allotted.

CONCLUSION

For the foregoing reason a writ of certiorari should be denied.

Respectfully submitted,

Of Counsel:
RICHARD N. GILBERG
EARL V. BROWN, JR.
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, N.W.
Washington, D.C. 20001

April 22, 1993

MARC J. FINK *
TORBJÖRN B. SJÖGREN
SHER & BLACKWELL
1255 Twenty-Third St., N.W.
Suite 500
Washington, D.C. 20037
(202) 857-2990
Counsel for Amicus Curiae

* Counsel of Record

APPENDICES

APPENDICES

APPENDIX A

[ORIGINAL]

FIRST AMENDED
PROOF OF CLAIM

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

Case Number ak-90-10680-RR
Chapter 7

IN RE TRANSCON LINES,
Debtor(s)

[Filed Feb. 4, 1991]

AMOUNT OF CLAIM: $23,053,976.18

Claimed as (X) General unsecured $18,179,717.20
(XX) Administrative $3,324.81
(XX) Priority $4,870,717.20

1. Name of Creditor (print or type)
   Teamsters National Freight Industry Negotiating Committee

   Mailing Address

   c/o Reich Adell & Crost,
   501 Shatto Place Suite 100
   Los Angeles, California 90020

2. The debtor was, at the time of the filing of the petition, and still is, indebted (or liable) to this claimant, see attached list in the sum of $23,053,976.18.

3. The consideration for this debt is as follows: Unpaid wages under collective bargaining agreement, severance pay, and damages under 29 U.S.C. Section 2104(a).

4. (If the claim is founded on writing), the writing on which this claim is founded (or a duplicate thereof) is attached hereto (or cannot be attached for the reason set forth in the following statement). See attached.

5. (If appropriate), this claim is founded on an open account, which became (or will become) due on ————————, as shown by the itemized statement attached hereto.

6. No judgment has been rendered on the claim except: None.

7. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. This claim is not subject to any set off or counterclaim except: None.

9. No security interest is held for this claim except: Statutory lien under California Code of Civil Procedure Section 1204 (If security interest in property of the debtor is claimed), the undersigned claims the security interest under the writing referred to in paragraph 4 hereof. Evidence of perfection of such security interest is also attached hereto.

10. This claim is an unsecured claim, except to the extent that the security interest, if any, described in paragraph 9 is sufficient to satisfy the claim. It is not entitled to priority unless the reason for priority and the amount claimed as priority is set forth below. Wages and severance pay earned within 90 days of petition, 11 U.S.C. Section 507(a)(3).

11. If claimant has obtained this claim by assignment, a copy of explanation of said assignment is attached hereto.

Name of Creditor (print or type) Teamsters National Freight Negotiating Committee

Signature /s/ [Illegible]

Title (corporation officer, partner or agent) Reich, Adell & Crost, Attorneys for Creditors

Date 1/31/91

PENALTY FOR PRESENTING FRAUDULENT CLAIM: FINE OF NOT MORE THAN $5,000 OR IMPRISONMENT FOR NOT MORE THAN FIVE (5) YEARS OR BOTH—TITLE 18, U.S.C. SECTION [Illegible]

PROOF OF CLAIM FIRST AMENDED

CLAIM NUMBER 177-156

DESCRIPTION OF CLAIMS

This is the First Amended Claim of the Teamsters National Freight Industry Negotiating Committee ("Teamsters") for wages and other amounts due to former employees of the debtor represented by the Teamsters, and for damages under the Worker Adjustment and Retraining Notification Act (WARN), 29 U.S.C. § 2104(a). This claim amends Claim No. 177-156 filed on June 20, 1990, and Claim No. 215-192 filed on May 25, 1990.

The Teamsters file this claim on behalf of, and as the statutory bargaining agent of the former employees of the debtor listed in the claim, in order to enforce the collective bargaining agreements (listed in Attachment B) to which the debtor and the Teamsters are signatory. *See* 29 U.S.C. § 185. In addition, those employees indicated by an asterisk (*) by their social security number have each executed an individual claim form and Power of Attorney,

authorizing the Teamsters and the firm of Reich, Adell & Crost to represent them in these proceedings. A blank form is attached here as Exhibit A. The complete forms are too bulky to file with the Court, but may be viewed at the law offices of Reich, Adell & Crost, 501 Shatto Place, Suite 100, Los Angeles, CA 90020. Clyde Flowers may be called at (213) 386-3860 to arrange for an appointment. The data for all other employees was obtained from the payroll records of the debtor.

This claim is a priority claim to the extent allowed under 11 U.S.C. § 507(a)(3) for wages, including vacation, severance and sick leave pay, earned within 90 days of the bankruptcy. The claims include the following elements, which correspond to the columns in the Summary of Claims for each individual which is Attachment D here.

——GROSS AMOUNTS——

I. PRIORITY WAGES $4,898,274.85

This includes unpaid wages earned from January 31, 1990 to the filing of the petition on May 1, 1990, including holiday pay. It also includes vacation, sick pay, and the annual profit sharing payment ($350) accrued in the year before the bankruptcy petition, all divided by 4 to account for only the amount earned 90 days before the petition. This column is not adjusted for the $2,000.00 per employee limit of § 507(a)(3).

II. GENERAL WAGES $7,835,099.42

This includes the ¾ of vacation, sick pay, and profit sharing accrued in the last year before the bankruptcy petition, not credited to priority claims. It also includes unpaid wages earned before January 31, 1990, and vacation, etc. earned in prior years which remains unpaid.

III. MISCELLANEOUS CLAIMS $397,320.37

This includes other amounts due under the collective bargaining agreement not included above, such as griev-

ance awards, unpaid medical expenses and employee out-of-pocket expenses which should have been reimbursed.

IV. SEVERANCE PAY $2,381,743.93

This is the two-weeks of severance pay due to all Teamster employees who were on the payroll for the week ending April 20, 1990, pursuant to the Settlement Agreement approved by the Court. A copy of the Settlement Agreement is Attachment B here. Pursuant to that agreement, this amount is a part of the priority claims under § 507(a)(3). By a separate Settlement Agreement also approved by the Court, a copy of which is Attachment C, those Teamster employees remaining on the payroll after the filing of the bankruptcy petition have the option of making an administrative claim for their vacation and sick pay accrued during the bankruptcy, or taking the severance pay as a priority claim. For purposes of this First Amended Claim, these individuals are listed with their severance pay as a priority claim, since the debtor has not provided the information necessary to calculate any administrative claims. However, *the Teamsters and the individual employees retain the right to amend their claim to opt for an administrative claim instead.* The information for the amount of severance pay was obtained from the debtor's payroll records. Where information was unavailable, the severance pay has been estimated at $1,000.00.

V. WARN ACT CLAIMS $7,538,212.81

On or about April 20, 1990, the debtor closed nearly all of its facilities and permanently laid off approximately 3,000 employees at its terminals located throughout the United States. The employees listed here are represented by the Teamsters. No prior notice of the shut down and lay-offs was given to any affected employee, the Teamsters, or any of its affiliated local unions, as required by the WARN Act, 29 U.S.C. § 2102. Pursuant to 29 U.S.C.

§ 2104, the debtor is liable to each affected employee for 60 days wages and benefits. In addition, attorneys fees per 29 U.S.C. § 2104(a)(6) are claimed, in an amount to be determined.

Pursuant to the Settlement Agreement (Attachment B), the severance pay described above is credited against any WARN Act claims. The amounts shown here reflect that credit.

—— TOTAL AMOUNTS CLAIMED ——

VI. PRIORITY $4,870,934.17

This is the sum of the Priority Claims and Severance Pay listed above, up to the maximum of $2,000.00 per employee in accordance with 11 U.S.C. § 507(a)(3)(B). This is the amount of Priority Claim asserted here.

VII. GENERAL $18,179,717.20

This is the sum of the General Claims, Miscellaneous Claims, WARN Act claims, plus that portion of the Priority and Severance Claims for each employee which exceeds the $2,000.00 limit. This is the amount of General Claims asserted here.

VIII. ADMINISTRATIVE $3,324.81

These are wage claims of Teamster employees working for the estate after the filing of the bankruptcy on May 1, 1990. As stated above, this may be increased to include the accrued vacation and sick pay for those eligible employees who opt to do so in lieu of severance pay. This also constitutes a claim and demand for the Administrative expenses agreed to in Attachment C.

TOTAL CLAIM $23,053,976.18

APPENDIX B

UNITED STATES BANKRUPTCY COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Bankrupt No. LA90-10680-RR
IN THE MATTER OF: TRANSCON LINES

GENERAL UNSECURED PROOF OF CLAIM IN BANKRUPTCY

[Filed Oct. 17, 1990]

THOMAS J. FRAWLEY, on the date hereinafter set forth, being first duly sworn deposes and says:

1. That he is the Manager, Withdrawal Liability of Central States, Southeast and Southwest Areas Pension Fund, the Claimant herein, maintaining offices at 9377 West Higgins Road in the City of Rosemont, County of Cook, State of Illinois, 60018-4938, that he is duly authorized by said Trust Fund to make the proof of Claim.

2. That debtor was and still is justly and truly indebted to said claimant for a pro-rata portion of the unfunded vested liabilities of said Trust Fund, under the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (29 U.S.C. Sec. 1381(a)), in the sum of fifteen

million, nine hundred sixty-six thousand, three hundred sixty-seven and 72/100ths. $15,966,367.72

3. That the consideration of said debt is services performed by certain employees of the debtor.

4. That no part of said debt has been paid.

5. That there are no set offs or counter-claims to said debt.

6. That Claimant does not hold, and has not received any security for the debt, nor has any person by the Claimant's order or knowledge or belief had or received any security for the debt.

7. That this claim is filed as an unsecured general claim.

8. That the Pension Fund is filing this claim without prejudice or waiver of any of the rights it has under the Multiemployer Pension Plan Amendments Act of 1980, the Employee Retirement Income Security Act of 1974 (ERISA), the Revised and Amended Trust Agreement of the Central States, Southeast and Southwest Areas Pension Fund, and without prejudice to all of its rights in law or equity to pursue this assessment or any other assessment against Transcon Lines and/or any other entity and/or any other person and/or any other party in interest.

On information and belief that the foregoing is true, accurate and complete to the best of the claimant's knowledge, this Proof of Claim is dated at Rosemont, Illinois this 12th day of October, 1990.

CENTRAL STATES,
SOUTHEAST AND
SOUTHWEST AREAS
PENSION FUND

By: /s/ Thomas J. Frawley
THOMAS J. FRAWLEY
Manager
Withdrawal Liability

[Notary Omitted in Printing]